

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB 16 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0363-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
RICHARD CHARLES TUCCIO,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20091004001

Honorable Jane L. Eikleberry, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Richard Charles Tuccio

Florence
In Propria Persona

ESPINOSA, Judge.

¶1 Following a jury trial, petitioner Richard Tuccio was convicted of kidnapping (domestic violence), sexual assault, and second-degree burglary. The trial court sentenced him to concurrent, presumptive prison terms, the longest of which is 10.5

years. We affirmed Tuccio’s sentences and convictions on appeal. *State v. Tuccio*, No. 2 CA-CR 2009-0369 (memorandum decision filed Nov. 29, 2010). After appointed counsel notified the court he believed “no colorable claims exist[ed] to raise on [Tuccio’s] behalf,” Tuccio was permitted to file a pro se petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. Tuccio now seeks review of the court’s denial of that petition, and its denial of his motion for rehearing. Absent a clear abuse of discretion, we will not disturb the trial court’s ruling on post-conviction relief. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 In his pro se petition for review, Tuccio argues, as he did below, that trial and appellate counsel were ineffective, there was insufficient evidence to support his convictions, the state failed to adequately investigate his case, and the trial judge “abuse[d] her discretion in this case.”¹ Tuccio also argues the court erred in failing to conduct an evidentiary hearing before denying his petition.

¶3 In a thorough, well-reasoned minute entry order, the trial court identified all of the claims Tuccio had raised, and resolved them correctly and in a manner permitting any court to review and determine the propriety of that order. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). The court concluded correctly that the claims raised were either without merit or precluded pursuant to Rules 32.1 and 32.2. No

¹We do not address issues Tuccio raised for the first time in his motion for rehearing, which the trial court correctly declined to address. *See Ariz. R. Crim. P. 32.9(a)*.

purpose would be served by restating the court's ruling in its entirety. *See Whipple*, 177 Ariz. at 274, 866 P.2d at 1360. Rather, we adopt the court's ruling.

¶4 Because Tuccio has not sustained his burden on review of establishing the trial court abused its discretion in denying his petition for post-conviction relief, we grant the petition for review but deny relief.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge